

**Consideration of a request by Department of Natural Resources landholding divisions for amendments to the non-rule policy for Easements on Department of Natural Resources Properties and Navigable Waters.**

The current Natural Resources Commission non-rule policy for Easements on Department of Natural Resources Properties and Navigable Waters addresses the need for compensation to the Department in the issuance of easements for utilities, access roads and other land uses. It specifies the Department is to receive fair market value, as well as compensation for lost resources. The policy states that easement costs from other locations can be used as the basis for determining easement values on Department properties.

The determination of the easement values has been problematic for some easement requestors. Some utilities do not routinely buy easements – they get easements from landowners as part of the agreement for providing utility service. Other utilities have not bought easements in the area for many years, so they do not have recent comparisons. Finding professional appraisers able to do easement appraisals is difficult. And many people seeking access easements have found the costs of the appraiser to be as much as the value of the easement.

In order to provide better service to users, an inquiry was made to the surrounding states regarding how they handled land use easements, particularly in regard to compensation. The states vary considerably in how they handle compensation. Kentucky specifies fair market value with little guidance on how that is determined. Ohio charges one flat fee regardless of size or impact. Michigan had a fee schedule that varied with type of use and amount of impact.

The Michigan fee schedule format was utilized as a way to provide incentives to easement requestors to minimize the easement impact, and to vary compensation to the Department based on the amount of impact. The base fee cost is higher than Michigan, but by using incentive discounts not available in Michigan, easement requestors can reduce the easement costs substantially.

In addition, some other possible easement policy items that would provide useful guidance to IDNR landholding divisions were gathered from the information from the surrounding states. These are included for consideration to provide consistency among divisions, improve resource protection, and reduce impacts to future users.

The DNR Property Regulations Committee has reviewed the amendments and recommends approval.

Attached as Forestry Exhibit B-1 – Easements on DNR Properties and Navigable Waters (First Amendment)

Attached as Forestry Exhibit B-2 – Land Use Easement Summary (surrounding states)

**NATURAL RESOURCES COMMISSION**  
**Information Bulletin #28**  
**Easements on Department of Natural Resources Properties and Navigable Waters**  
**(First Amendment)**

I. Application and Purpose of Information Bulletin

(A) The department of natural resources owns properties throughout Indiana. The properties serve a variety of natural, cultural, economic, and recreational purposes. Missions of divisions within the department vary according to their statutory responsibilities. For example, a state forest may offer many of the same opportunities as a state park, but management on these two types of properties must also properly reflect differing priorities in the purposes they serve. Included among them are navigable waters that the state holds in trust for its citizens and for which the department has general charge.

(B) One management challenge faced by every type of department property is how properly to address easements. New or expanded easements are sought. Properties are acquired where easements were established before acquisition. Existing easements are modified or abandoned.

(C) In general, an easement is a right of use over the property of another. This information bulletin is directed to the right of use of another person over the property of the department (as opposed to an easement the department may enjoy over the property of another). The term "easement" should be broadly construed to give liberal application to this information bulletin. As a result, the guidance may reasonably be applied to rights-of-way, licenses for the use of department lands, and similar interests. The information bulletin is intended to apply only to the department's proprietary functions with respect to these lands, however, and not to its regulatory functions. In other words, this information bulletin should not be viewed as providing guidance with respect to any licensing function, sanction, or other order that is subject to review under the administrative orders and procedures act (IC 4-21.5).

The purpose of the information bulletin is to set guidance for the management of easements on properties owned by the department, including navigable waters. The emphasis is upon requests for new or expanded easements, and what employees of the department should consider in making recommendations pertaining to those requests. Consideration is also given to the management of existing easements and to their modification or abandonment. In seeking to achieve the purpose of this information bulletin, the overall responsibilities of the department, as well as the unique missions of its divisions, provide a backdrop. An effort is also made to incorporate policies previously adopted by the natural resources commission relative to the management of easements.

II. History of Easement Policies Adopted by the Commission

**(A)** One of the major functions of the natural resources commission is to assist in implementing uniform policies with respect to natural and cultural resources. Important elements of this function are to provide policy guidance and to participate in management of properties owned or leased through the department of natural resources. In performing this function, the commission has previously adopted policy statements concerning the management of easements on department of properties.

**(B)** A notable statement by the commission was made in November 1966 with respect to utility lines. This statement suggested four basic principles:

1. The commission has authority, under proper circumstances, to approve the construction of utility transmission facilities on department properties and to approve the grant of an easement for their maintenance.
2. To the extent practicable, the placement of utility transmission facilities should use established corridors to accomplish the following purposes:
  - (A) reduce the area of land required;
  - (B) lessen the adverse impact upon the aesthetic qualities of the land; and
  - (C) minimize physical damage to the land.
3. Reasonable fees and charges should accompany the approval of a utility easement, but fees and charges should be waived where the utility transmission facilities are being placed for the convenience of the department.
4. An easement should include a provision specifying that a utility is responsible for costs and damages if utility transmission facilities are later moved.

**(C)** In March 1971, the commission adopted a policy concerning parcels in private ownership that were landlocked as a result of public land acquisition for Monroe Lake. Although the terms of this policy are largely peculiar to the site, and beyond the scope of this information bulletin, three basic principles were also suggested by the policy:

1. The department should consider providing access to a person, who is landlocked as a result of acquisitions by a governmental entity, where the department is or later becomes responsible for land management.
2. The access should be developed so as not to conflict with any specialized use of the property designated by the department and so as to minimize the impact on aesthetic values.
3. Where the federal government has a special relationship to the land, resulting from its status as the lessor or as a condition of providing funding for property acquisition, the relationship must be considered in evaluating any request for an easement.

### III. Policy Statement Regarding Easements on Department Properties

Lands managed by the department are held for the benefit of all the people of Indiana. The lands were ordinarily purchased with public funds or obtained through donations from citizens whose explicit or implicit desire was to enhance public enjoyment and education. The placement of easements makes land management more complex and more expensive. Facilities developed in

association with easements reduce the natural, cultural, aesthetic, economic, and recreational values of these public lands. New or expanded easements are discouraged. Existing easements should be managed to minimize their adverse impacts. If the purpose for which an easement was approved no longer exists, the department should actively seek its formal termination.

#### IV. Process for Review of Requests for New or Expanded Easements

**(A)** Utilities and other interested persons periodically request new or expanded easements on properties owned by the department, including navigable waters. Even though new or expanded easements are generally discouraged, there are circumstances where approval is supportable. A person requesting an easement is responsible for providing information needed to fully evaluate and execute documentation to memorialize the easement. Examples of this information may include test results, natural or cultural resource reports, environmental assessments or environmental impact statements, fiscal analyses, real estate surveys, the preparation of documents appropriate for recordation, and any other documentation found necessary or appropriate by the department for the type of easement sought.

**(B)** Where a request for a new or expanded easement is received, employees of the department will prepare a report, for consideration by the commission, recommending approval or denial. The division primarily responsible for managing the subject property, acting in consultation with the division of land acquisition and the department's legal section, provides the report. If the recommendation is for approval, the report should also describe conditions to accompany the easement.

**(C)** In determining whether to recommend approval or denial of an easement request, the following factors are considered:

1. Whether legal restrictions apply to the site that would make granting an easement illegal or impracticable. Example: The articles of dedication for a nature preserve, dedicated under IC 14-31-1, prohibit development of the type anticipated by the easement.
2. Whether resources ~~are present that~~ might be particularly sensitive to disturbance. Examples: (A) The activity anticipated by the easement would damage a mussel bed. (B) The activity anticipated by the easement would likely threaten a population of animals or plants that are listed by the state or federal government as being threatened or endangered.
3. Whether other reasonable alternatives exist for the placement of the easement. Example: The easement could be located along an adjacent roadway rather than extended through a state forest, even though use of the roadway might provide a more circuitous route.
4. Whether denial of the easement would result in an unusual hardship to the applicant. Example: A rural utility cannot finance the placement of a line to serve private homeowners with potable water if the line must be made to circumvent a department property.
5. Whether the department will receive a benefit from development of the easement.

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Example: The easement will allow the location of a sanitary sewer to transport wastes, generated within a reservoir property, for processing by a municipal treatment plant.

6. Whether a legal obligation mandates the department to grant or modify an easement.

Example: The terms of a deed granting title to the state or to the department require an easement be maintained in favor of a third party.

**(D)** If the division determines to recommend approval of a request for a new or expanded easement, the following factors are considered in determining conditions to include in the easement:

1. What are the best management practices to minimize the disturbance caused by any construction activities authorized by the easement. These practices should consider natural, cultural, economic, and recreational benefits that are derived from the land. Example: Erosion control techniques should be applied that are effective and compatible with site usage.
2. What are the best management practices to minimize future disturbance caused by maintenance activities for any use authorized by the easement. These practices should consider natural, cultural, economic, and recreational benefits that are reasonably foreseeable. Example: Maintenance of an easement should not conflict with uses anticipated for a state park according to its approved master plan.
3. Whether all legal requirements are met before an easement is granted. Example: The department's division of historic preservation and archeology has located each historic site or historic structure on the proposed easement. If the activity anticipated by the easement requires the alteration of an historic site or historic structure, the easement is conditioned upon approval for the alteration being received from the historic preservation review board before the alteration begins.
4. Whether all legal requirements are met with respect to the activity authorized by the easement. Example: The easement is conditioned upon approval for any construction activities within a floodway for which a permit from the department is required.
5. Whether the easement is described with sufficient particularity to support a clear understanding by current and future department employees, and by the person who holds the easement, of its application and limitations. Example: A plat and description suitable for recordation may be required.
6. Whether an easement is written as narrowly as is practicable to serve its stated purpose. **Both Limitations on time, and space, and beneficiaries are to be considered recommended.** Examples: (A) With respect to time, where the person seeking the easement holds a life estate on land to which the department holds the remainder, the department would ordinarily grant the easement in gross. Also, an easement may be described to cover a limited duration. ~~(such as a four-year license) with discretion to renew placed in an appropriate division director or deputy director.~~ **An easement shall be no longer than required to serve the intended purpose. Generally, the term shall not exceed 40 years.** (B) With respect to space, the areas to be disturbed during construction activities are described in the easement to include no more than what is reasonably required for construction. **(C) With respect to beneficiaries, the department would ordinarily grant an easement so as to prohibit the recipient from**

transferring the easement to another, granting use of the easement to another, or burdening the easement with a purpose other than specified in the easement. The department would reserve the right to grant an easement to another person or persons to use the same corridor. The easement would provide for the reversion of rights to the department if the recipient exceeded a limitation in, or otherwise violated the terms of, the easement.

7. Whether the amount of consideration for the easement has been determined to reasonably assure the department receives fair market value. In determining fair market value, the department shall consider economic factors as well as compensation for loss to natural and cultural resources caused by the construction and maintenance of the easement. The department ~~is to~~ **may** compare formulae and methodologies used for determining compensation for similar easements. The amount of compensation may, ~~however,~~ be adjusted where a beneficiary of the easement is the state or a local governmental entity. **A minimum fee of \$500 is established for an easement, although the fee does not apply if the sole beneficiary of the easement is the department. To assist in determining fair market value, reference may be made to the Standard Compensation Schedule in Part V of this Information Bulletin.** Example: The department may require an applicant, for an easement to place fiber optics cable, to disclose the amount and terms of compensation the applicant provided for an easement to place fiber optics cable at other locations.
8. Whether every reasonable effort has been made to place a new easement within an existing utility corridor. Example: The department can require an easement to be located in a way that is less convenient and more costly to the person seeking the easement where an existing utility corridor could be used.
9. When there are particular legal requirements that must be met before the department determines to recommend approval, denial, or conditioning of an easement request, whether these requirements have been met. Example: The department shall review any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is filed, taking into account the nature and scope of the request. Any decision by the department to deny a request of this nature shall be in writing and supported by substantial evidence contained in a written record. An affected person may take administrative review and judicial review of a determination of this type, and the commission shall not act upon the easement until the review is final.

## V. Standard Compensation Schedule

1. A standard easement fee is established for utilities for each linear foot as follows:

MAXIMUM EASEMENT WIDTH IN FEET	RATE PER FOOT
10	\$2
15	\$3
20	\$4

30	\$6
40	\$8
50	\$10
100	\$20
200	\$40

A width between the stated widths is assessed at the higher rate.

2. The standard fee for temporary right-of-way for construction is 50% of the rate per foot established in part 1.
3. The rates per lineal foot established in part 1 may be reduced by 15% for each of the following conditions that are met:
  - (a) A utility provides local service and the department is among those that are served.
  - (b) A utility stays within an existing easement corridor or existing roadway berms.
  - (c) A utility is not-for-profit and the line is for end-of-service distribution.
  - (d) Structures associated with the easement are buried.
4. The rates per lineal foot established in part 1 may be increased to 200% of the stated rate if construction begins without obtaining prior authorization from the department.
5. The standard fee for a utility cabinet or similar structure not exceeding a footprint of 400 square feet of cleared ground is \$5,000.
6. The standard fee for a utility cabinet or similar structure, with a footprint exceeding 400 square feet of cleared ground, is \$5,000 plus \$10 per square foot of cleared ground exceeding 400 square feet.
7. A standard easement fee schedule is established for roadways as follows:
  - (a) For a roadway serving a single parcel, twice the rates established in part 1.
  - (b) For a roadway serving more than one but fewer than eight parcels, the same rate per parcel owner as established in part 1.
  - (c) For a roadway serving at least eight parcels, 60% of the rate per parcel owner as established in part 1.
  - (d) The rates established in this part may be increased to 200% of the stated rate if construction begins without obtaining prior authorization from the department.

- (e) **The department may also apply this schedule to easements for purposes other than roads, but it does not apply to utility easements.**

~~V.~~ **VI. Rights of Entry**

The director is authorized to approve a right of entry to conduct surveys or collect data in preparation for making an easement request. The right of entry may be conditioned as determined appropriate by the department to minimize damage to natural or cultural resources and to provide for public safety and convenience. Grant of a right of entry does not constitute or imply approval of the easement.

~~VI.~~ **VII. Utility Line Crossings Beneath Navigable Waters**

An easement is not required for a utility line crossing that meets each of the following requirements:

1. The utility line is placed entirely beneath the bed of a navigable waterway.
2. The department does not own the property on either side of the navigable waterway.
3. The utility line qualifies for a ~~statewide permit~~ **general license** under ~~310 IAC 6-1-18~~ **312 IAC 10-5**.
4. The waterway is not a lake.
5. The crossing forms a straight line and is at an angle of between 45 degrees and 135 degrees from the shoreline.

If a person elects to place a utility crossing under this section, no property interest or right is established in favor of the person.

~~VII.~~ **VIII. Emergency Construction Approvals**

The director of the department and the commission chair are authorized to approve emergency construction activities in association with an existing or proposed easement where consideration of the approval during a regular meeting of the commission is impracticable. Following consultation by the director and the chair, correspondence showing the signature of either of them is sufficient to memorialize an emergency construction approval. An emergency construction approval does not constitute or imply approval of the easement. A person seeking an easement must yet request and obtain approval of the easement from the commission. If approval of the easement is not obtained, the person performing the emergency construction can be required to restore the site as nearly as practicable to its condition before construction.

~~IV.~~ **IX. Effective Date and History of Information Bulletin**

This information bulletin was approved by the commission during its regular monthly meeting of



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April 18, 2000 and ~~is~~ **became** effective June 1, 2000. On the effective date, the bulletin was published in the Indiana Register at 23 IR 2327. **The First Amendment was made by the commission during its regular monthly meeting of May 18, 2004 and became effective July 1, 2004.**

**LAND USE EASEMENT SUMMARY**

<b>State</b>	<b>ILLINOIS</b>	<b>KENTUCKY</b>	<b>MICHIGAN</b>	<b>OHIO</b>
<b>Land Use Instrument</b>	License	License	Easement Deed	License
<b>Types of Land Use</b>	Utilities, access roads	Utilities, access roads	Utilities, access roads	Utilities, access roads
<b>Term of Instrument</b>	5-year renewable, or non-expiring	One year or specified; Renewable	Specified or indefinite	25 years; Renewable
<b>Assignment of Instrument</b>	Not specified	Non-transferable without written consent	Transferable only with written approval	Transferable only with consent
<b>Reversion of Rights</b>	Revokable	May terminate at any time; Access road – terminate upon transfer of property	Reverts when the use need ceases	Reverts at expiration of license
<b>Restrictions on Access Roads</b>		No multiple landowners over one access road – seek county adoption of road if needed	Allows multiple owners on access roads	Only licenses one owner for access road to limit development
<b>Application Review Fee</b>	None	None	\$300 up to ¼ mile; \$150 for each additional mile beyond ¼ mile	None
<b>Annual Fee</b>	Based on State formula tied to Consumer Price Index	Based on Forest Service fees or method determined as fair	None	None
<b>One Time Fee</b>	An option in place of annual fee	\$100	See fee schedule below	\$1,200
<b>Other Compensation</b>	None	None	Tree value lost of three rotations from that site	Value of trees removed

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<b>Other</b>		Requires liability insurance for commercial utilities; Reduces or waives fees for non-profit utilities and end-of-line utilities	All utility lines will be buried whenever feasible	Fee is split between Landholding Division (\$1000) and Real Estate Division (\$200)
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### Michigan Utility Easement Fee per Linear Foot of Right-Of-Way

Right-of-way width Up to (feet)	Upper Peninsula	Northern Lower Peninsula	Southern Lower Peninsula
<b>10</b>	\$0.60	\$1.05	\$1.50
<b>15</b>	\$0.90	\$1.60	\$2.25
<b>20</b>	\$1.20	\$2.10	\$3.00
<b>30</b>	\$1.80	\$3.15	\$4.50
<b>40</b>	\$2.40	\$4.20	\$6.00
<b>50</b>	\$3.00	\$5.25	\$7.50
<b>100</b>	\$6.00	\$10.50	\$15.00
Temporary right-of-way for short term construction			Above schedule x 50%
Utility cabinet sites up to 20 feet by 20 feet			\$4,500

**Appraisals may be used when the fee schedule would result in a charge less than the value of the rights conveyed.**

**There is a minimum charge of \$500 if the fee schedule would indicate less than that amount.**

**All utility lines shall be buried whenever feasible. Where easements for above-ground utilities are approved, the charge will be 200% of the above schedule.**

### Michigan Private Road Easement Fee Schedule

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Easement – single (minimum - \$1,000)	Twice the rate of the Utility Fee Schedule Above
2 – 7 parcels sharing road; per parcel (easement)	The same rate as the Utility Fee Schedule Above per parcel owner (easement)
More than 7 parcels sharing road, per parcel (easement)	Sixty percent (60%) of the rate of the Utility Fee Schedule Above